IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WP(C).No. 34437 of 2007(Y)

AGAINST THE ORDER IN EP.13/2007 IN
OS.369/2004 of MUNSIFF COURT, OTTAPPALAM
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PETITIONER:

E.KADEEJA,W/O.SAIDU
POOTHARATHODIYIL, KANNIAMPURAM
AMSOM,THOTTAKKARA DESOM,OTTAPALAM TALUK.

BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

RESPONDENT:

BEENA D/O.KARUTHANATH JANAKI AMMA
VANIAMKULAM AMSOM, KOONATHARA POST
OTTAPALAM TALUK,PALAKKAD DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.34437 of 2007

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Dated this the 22nd day of November, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the Munsiff, Ottapalam whereby he has directed to attach an amount of Rs.1,000/- per month from the salary drawn by the judgment debtor, namely, Kadeeja. The writ petitioner is a Full-time Sweeper working in the Kollangode Grama Panchayat. The court below found that Rs.1,000/- is attachable. According to the petitioner, her total salary is Rs.5,410/- and deduction is Rs.3,500/- and the net salary is Rs.1,910/-. In the decision reported in **Sasidharan** v. **K.C.T.S.S. Sangam** - 1994 (1) K.L.T. 429 this Court has considered the aspect and held that the Dearness Allowance, C.C.A. and H.R.A. are exempt from attachment. So, as far as this case is concerned, the salary for the purpose of calculating the attachment will be Rs.4,870/-. First Rs.1,000/- has to be deducted and only the 1/3rd of the

remaining can be attached. So, if it is done then the attachable salary will come to Rs.1,290/-.

2. Learned counsel for the writ petitioner has submitted that her carry home salary is only Rs.1,910/- and if Rs.1,000/- is deducted, she will be left without any amount and also submitted that she is working in a place which is about 50 to 60 kms. away from her residential house. Learned counsel also would contend that the subscription for the Provident Fund, society loan recoveries and other dues had to be deducted, which comes to about Rs.3,500/- and if it is done, there will not be attachable amount at all under Section 60(i)(k) of C.P.C. This Court has held in the decision referred to by me that deduction to be made are not exempt from attachment and therefore the P.F. contribution cannot be deducted. So also the recovery of other dues otherwise than on other attachments cannot be deducted. Therefore, if it is so one cannot find fault with the order of the court below in directing attachment of Rs.1,000/-. But whenever an attachment order is issued, the court is bound to instruct that the attachment shall never be for more than 24 months.

3. At this stage, learned counsel would submit that before

the court below there was an offer to pay Rs.1,000/- per month as instalment payment and it has come up for consideration. But as the decree holder did not present before the court, the court passed the order. Now I direct the court below to consider it once again and find out whether with the consent of the decree holder some instalment facilities can be provided or some breathing time can be provided for the reason that the judgment debtor is only a Full-time Sweeper, who has to travel about 55 kms. and if a major portion of the salary is attached, she will be left with no means for her day to-day existence. The court can pursue the decree holder to bestow some sympathy on the judgment debtor and pass appropriate orders.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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